



Office of the Inspector General

Commonwealth of Massachusetts

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Prevailing Wage Rate as Applied to School Bus Contracts

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The Commonwealth of Massachusetts
Office of the Inspector General

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Dear Public Official:

The Office of the Inspector General prepared this advisory to help local officials understand the applicability of prevailing wage law to the procurement of school bus contracts.

Procurement rules are spelled out in Massachusetts General Law (M.G.L.) Chapter 30B, the Uniform Procurement Act. The law is designed to promote competition and integrity in state and local contracting and purchasing.

There is some confusion regarding how it is determined that prevailing wage applies to a given school transportation contract. This advisory seeks to:

- Identify the factors which determine the applicability of the prevailing wage law to school bus contracts; and
- Explain the role of the Division of Occupational Safety in establishing prevailing wage.

The Office of the Inspector General is charged with preventing and detecting fraud, waste, and abuse in state, county, and local government. When possible, we emphasize prevention and recommended best procurement practices. We hope this guide assists local officials in preventing procurement disputes before they occur.

I hope that this advisory is helpful. As always, I welcome your suggestions. Please do not hesitate to contact my staff with any questions you may have.

Sincerely,

Gregory W. Sullivan

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Prevailing Wage Rate as Applied to School Bus Contracts

Introduction

This advisory provides guidance to public officials as to when the prevailing wage rate applies to school bus contracts awarded pursuant to M.G.L. c.30B, the Uniform Procurement Act.¹ Chapter 30B establishes uniform procedures for local governments to use when contracting for supplies, equipment, services, and real property. This advisory is intended to clarify this issue to help awarding authorities avoid bid protests by school bus vendors. In general, the prevailing wage rate is associated with construction contracts, however, M.G.L. c.71, §7A also requires that school bus drivers be paid a prevailing wage rate under certain circumstances.

The Division of Occupational Safety (DOS) is the governmental agency responsible for the establishment of prevailing wage rates. DOS is a division of the Massachusetts Department of Labor. Not every local government's school bus contract is subject to the prevailing wage as provided for in M.G.L. c.71, §7A. A local government's school bus contract is not subject to the prevailing wage rate, unless the local government meets certain criteria as provided for in M.G.L. c.71, §7A.

First, DOS will determine if a city or town has a population greater than or equal to 16,000. DOS utilizes the most recent United States census data to determine if a city or town has a population greater than or equal to 16,000. If DOS determines the city or town does not have a population (or combined population) that is greater than or equal to 16,000, it will not set a prevailing wage rate. If one or more municipalities join in order to acquire services under a school bus contract, then DOS will aggregate the population of multiple cities or towns in determining the applicability of the prevailing wage rate.

¹ Approximately 1,500 local governmental jurisdictions in Massachusetts (cities, towns, counties, districts, regional school districts, and local authorities, including housing and redevelopment authorities) follow the procedures to award contracts worth billions of dollars each year.

After DOS has established that a city or town's population is greater than or equal to 16,000, it will determine whether the city or town is within the jurisdiction of the Massachusetts Bay Transportation Authority (MBTA). If the local government is within the MBTA's jurisdiction, then a prevailing wage rate will apply. According to M.G.L. c.71, §7A, the rate per hour shall not be less than the mean average of wages established by collective bargaining agreements or understandings by cities and towns within the MBTA's jurisdiction. However, if a local government's established rate is higher than the mean average, then it must pay employees the higher rate. So, if the mean average of cities A, B, and C, within the MBTA's jurisdiction, is \$15 per hour, and city C does not have an established rate, city C will pay its employees \$15 per hour. However, if city A has an established rate of \$20 per hour, city A cannot pay the employee less than \$20 per hour.

If DOS determines the local government is not within the MBTA's jurisdiction, DOS will contact the school department that requested the wage rates and determine if there is a current collective bargaining agreement between the school system and its current transportation provider. If such an agreement exists, the prevailing wage rate shall be the minimum rate prescribed by said agreement. DOS will also obtain a signed copy of the collective bargaining agreement.

If DOS determines there is no existing collective bargaining agreement between the school system and a bus company, DOS will determine if there are any other existing collective bargaining agreements for bus drivers that operate within the local area. Accordingly, if such an agreement(s) exists, the applicable wage rate paid will be the average wage rate for non-probationary² drivers who operate³ in the local government. DOS will make such a determination by contacting all bus companies that operate in the local government under an existing collective bargaining agreement. Again, if more than one bus company operates in the local government, DOS will average the non-probationary wage rates to determine the prevailing wage rate. Finally, if DOS

² "Non-probationary" wage rates are paid to permanent employees, not new employees who receive a lower rate of pay for a given period of time (a probationary period).

³ "Operate" is defined as the picking up or discharging of passengers.

determines the local government is outside the jurisdiction of the MBTA; and no collective bargaining agreement between the bus company and the school system exists, or there are no bus companies that operate in the local area under a collective bargaining agreement, DOS will issue a letter stating there is no prescribed wage rate that vendors must pay under the contract.

Thus, DOS will determine the following for every local government:

- Is the population of the city or town greater than or equal to 16,000?
- Is the local government within the MBTA's jurisdiction?
- Does the school system have an existing collective bargaining agreement with a bus company?
- Does the local government have bus companies that operate within its area under an existing collective bargaining agreement?

Contact the Division of Occupational Safety for Clarification

If a local governmental body has any doubt as to whether it is subject to the prevailing wage rate, the awarding authority responsible for school bus contracts should contact DOS.

DOS will be able to furnish one of three responses:

- Yes, DOS is able to establish a wage rate.
- No, DOS is not able to establish a wage rate because there are no operative collective bargaining agreements in existence within the local area.
- No, DOS is not able to establish a wage rate because according to the last U.S. Census, the population of the city or town (or group of cities or towns) does not equal or exceed 16,000.

If DOS can only establish a single wage rate for bus drivers, it will also apply to wait time. Whether the school bus driver is in the process of picking up and discharging passengers, or the school bus driver is waiting for school children attending a field trip, the wage rate established by DOS shall apply. However, this shall only be the case if no separate wait time rate was established by a collective bargaining agreement.

Request a Letter from DOS for Inclusion in the Bid Documents

When the awarding authority responsible for the local government's school bus contract contacts DOS, it must request a letter from DOS that specifies whether or not the prevailing wage rate applies, and if so, what the rate will be. If DOS can establish a wage rate for the local government, DOS will include the wage rate in its letter. Whether the prevailing wage rate applies or not, the local government should include DOS's letter in the bid documents. In order to receive a letter from DOS, go to <http://www.mass.gov/dos> to download the "Request for Prevailing Wage Rates" form. This form must be mailed to DOS, as it does not accept electronic transmissions of any kind for prevailing wage rate requests. This form is the same form used in construction contracts for prevailing wage rates. In addition, if the contract includes option year(s) the wage rate shall also apply to the option year(s). Thus, a local government may be able to "lock in" a more favorable wage rate for a longer-term contract, which may be in the local government's best interest.

You may contact DOS for more information:

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Department of Labor
399 Washington Street, 5th Floor
Boston, MA 02108
Tel: (617) 727-3492
www.mass.gov/dos/index.htm